

5:10-CV-737

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS ONCOLOGY TECH, INC.		DEFENDANTS .DECIMAL, INC.		
(b) County of Residence of First Listed Plaintiff <u>Bexar County</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)		
		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.		
(c) Attorney's (Firm Name, Address, and Telephone Number) Mark H. Miller, Jackson Walker, L.L.P., 112 E. Pecan, Suite 2100, San Antonio, Texas 78205 (210) 978-7700		Attorneys (If Known)		
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)		
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 Foreign Nation	PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1114-1125; 28 USC 1331-1338 & 2201; Declaratory Judgment;						
Brief description of cause: Declaratory Judgment						

VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ injunction	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY		(See instructions):	JUDGE	DOCKET NUMBER
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DATE	SIGNATURE OF ATTORNEY OF RECORD			
9/3/10	Mark Miller			

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

3763987.1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ONCOLOGY TECH, INC.

§

Plaintiffs,

§§

v.

§

CIVIL ACTION NO.

5:10-cv-737

.decimal, Inc.

§

Defendants.

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ORIGINAL COMPLAINT

Plaintiff, Oncology Tech, Inc., respectfully shows the Court as follows:

I.

PARTIES

1. Plaintiff, Oncology Tech, Inc. ("Oncology Tech") is a Texas corporation having its principal place of business at 5608 Business Park, San Antonio, Texas 78218.

2. Defendant, .decimal, Inc. ("decimal"), is a Florida corporation having its principal place of business at 121 Central Park Place, Stanford, Florida 32771.

II.

JURISDICTION AND VENUE

3. Jurisdiction is proper pursuant to 28 U.S.C. §1331, 1332, and 1338. The amount in controversy exceeds the jurisdictional minimum, exclusive of interests and costs.

4. This Court has personal jurisdiction over the Defendant since Defendant has sufficient minimal contacts with this State and, in particular, this Judicial District, and

maintenance of the suit in this Judicial District does not offend traditional notions of fair play and substantial justice.

5. Specifically, Defendant offers and sells goods and services throughout the United States, including Texas. Venue is properly placed under 28 U.S.C. §1391 in the Western District of Texas.

6. This Court has pendant jurisdiction over all of the claims asserted herein, these claims being necessarily determinable together with the federal claims.

III.

FACTS

7. Oncology Tech is a small local San Antonio company with its headquarters in San Antonio, Texas.

8. Oncology Tech's principal line of business is manufacturing high quality compensators which medical clinics use in the course of delivering patient cancer therapy at the medical clinics.

9. Oncology Tech's compensators are custom manufactured brass modulators for use in Intensity Modulated Radiation Therapy ("IMRT") and are designed to meet the needs of radiation oncology professionals.

10. Oncology Tech's method of doing business includes radiation oncology professionals at medical clinic developing a unique radiation treatment planning system for a cancer patient, the medial clinic transmitting that unique information to Oncology Tech and Oncology Tech using that unique information to manufacture a unique compensator to treat the patient.

11. Prior to Oncology Tech's entering the market for manufacturing and delivering patient-specific compensators for IMRT, .decimal was the only third-party provider of patient-specific compensators for IMRT in the United States.

12. Currently, .decimal has more than 90% of the market for the sale of patient-specific compensators for IMRI in the United States.

13. Upon information and belief, .decimal has engaged in activities which are intended to injure .decimal's much smaller competitor, Oncology Tech.

14. Upon information and belief, .decimal has engaged in activities which do not make economic sense unless viewed from the perspective of .decimal intentionally attempting to injure new, smaller competitor, Oncology Tech.

15. Upon information and belief, .decimal asserts that Oncology Tech's method of doing business is unlawful.

16. .decimal asserts that the radiation treatment planning system file which the medical clinic creates and then uses to transmit the patient-specific information to Oncology Tech, and then Oncology Tech's use of the file is unlawful.

17. In particular, Elekta A.B. sells an XIO IMRT treatment planning software package to medical clinics which is advertised as being an "open, vendor-neutral treatment planning system." .decimal asserts that a medical clinic's use of Elekta A.B.'s XIO IMRT treatment planning software to provide patient-specific information to Oncology Tech in the file format provided by Elekta A.B. to the medical clinic is unlawful because it infringes .decimal's proprietary rights and copyright rights.

18. On information and belief, .decimal has asserted to third parties, and in particular Elekta A.B., that Oncology Tech's method of doing business is unlawful.

19. .decimal asserts that Oncology Tech's method of doing business infringes .decimal's copyright rights, proprietary information rights, copyrighted information rights, and trademark rights.

20. .decimal has threatened legal action against Oncology Tech "for trademark infringement, copyright infringement, deceptive and unfair trade practices, and for violation of the various other state and federal laws pertaining to your activities."

21. .decimal's acts described herein have caused injury to Oncology Tech and are causing injury to Oncology Tech and will continue to injure Oncology Tech unless restrained by this Court.

22. Unless .decimal's described acts are enjoined, Oncology Tech will suffer great, incalculable, and irreparable harm.

23. Each of the facts alleged herein is alleged with regard to each and every cause of action herein.

IV.

CAUSES OF ACTION

24. .decimal has engaged in unfair competition and tortiously interfered with Oncology Tech's existing and prospective business relationships.

25. .decimal, on or in connection with goods or services, has used and is continuing to use in commerce a false or misleading description of fact or false or misleading representation of fact, misrepresents the nature of characteristics, qualities, or geographic origin of .decimal's or Oncology Tech's goods, services, or commercial activities in violation of the Lanham Act, 15 U.S.C. §1125(a).

26. .decimal's acts have and will continue to comprise unfair competition against Oncology Tech under the laws of the State of Texas.

27. .decimal has published false and disparaging information about Oncology Tech resulting in damage to Oncology Tech.

28. Oncology Tech seeks declaratory judgment that Oncology Tech's method of doing business is lawful and that Oncology Tech's method of business does not infringe any of .digital's legal rights.

29. .decimal's acts complained of herein violate Oncology Tech's rights. Unless enjoined, .decimal will continue to violate Oncology Tech's rights, resulting in irreparable injury to Oncology Tech for which Oncology Tech will have no adequate remedy at law.

V.

PRAYER

NOW, THEREFORE, Plaintiff Oncology Tech, Inc. respectfully prays for the following relief:

A. A permanent injunction enjoining .decimal, its agents, servants, employees, attorneys, or anyone acting in concert with them from:

- (1) Using a false or misleading description of fact, or a false or misleading representation of fact, which misrepresents the nature, characteristics, or qualities of either Oncology Tech's or .decimal's goods, services, or commercial activities;
- (2) Engaging in conduct or actions that will injure or are likely to injure Oncology Tech's business reputation;
- (3) Publishing false and disparaging information about Oncology Tech;
- (4) Communicating to third parties statements contrary to 1-3 above;
- (5) Unlawfully interfering with Oncology Tech's existing and prospective business relationships with third parties.

B. A Judgment that .decimal be required to pay Oncology Tech's damages, together with pre-judgment interest and post-judgment interest as Oncology Tech has sustained as a consequence of Defendant's wrongful acts.

C. A judgment that Oncology Tech's method of doing business is lawful and that Oncology Tech's method of business does not infringe any of .digital's legal rights.

D. An award to Oncology Tech for such other and further relief as this Court may deem just.

VI.

JURY DEMAND

Oncology Tech respectfully requests a trial by jury.

Respectfully submitted,
JACKSON WALKER L.L.P.
112 E. Pecan, Suite 2400
San Antonio, Texas 78205
(210) 978-7700
(210) 978-7790 (facsimile)

By: 
Mark H. Miller
State Bar No. 14099200
mmiller@jw.com

Attorneys For Plaintiff,
ONCOLOGY TECH, INC.

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